

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of)
)
Request for Emergency Relief)
Enjoining AT&T Corp. From)
Discontinuing Service Pending)
Final Decision)

CC Docket No. 96-262

FILED
JUN 14 2000
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

COMMENTS OF BUCKEYE TELESYSTEM, INC.

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Comments of Buckeye Telesystem, Inc.
Emergency Request, CC Docket No. 96262
June 14, 2000

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COMMENTS OF BUCKEYE TELESYSTEM, INC.

Buckeye TeleSystem, Inc. (Buckeye), by counsel, files these comments in support of the Requests for Emergency Relief of the Rural Independent Competitive Alliance (RICA) and the Minnesota CLEC Consortium (Consortium).¹

I AT&T AND SPRINT HAVE ATTEMPTED TO DISCONTINUE INTERSTATE SERVICE OR REFUSED PAYMENT OF TARIFFED RATES

A. AT&T Has Discontinued Interstate Service to Buckeye's Local Exchange Customers

Buckeye is a facilities-based competitive local exchange carrier (CLEC) which began providing service to business and residential customers in the Toledo, Ohio area in March 1998. Buckeye offers interstate access service pursuant to its tariff FCC No. 1. Beginning at that time and continuing to the present, AT&T has delivered terminating interstate toll traffic to Buckeye and accepted originating interstate toll traffic from Buckeye.² This practice has continued until the present. AT&T has marketed its services to Buckeye's customers, including seeking to induce them to prescribe to AT&T long distance. Buckeye also has several business

¹ Public Notice, DA 00-1067, CC Docket No. 96-262, Released May 15, 2000.

² AT&T did not, however, submit an Access Service Request (ASR) to Buckeye.

customers which, as part of larger operations, participate in national contracts with AT&T for its services.

By letter of December 3, 1999, AT&T "instructed" Buckeye that it cease routing all traffic to AT&T including 0+, 1+, 500+, 877+, 900+ and all AT&T associated 10-10-XXX traffic, that Buckeye not assign any further originating customers to it and that Buckeye should block all terminating traffic from AT&T.³ The letter also stated that AT&T had previously advised Buckeye that it would not purchase switched access services from Buckeye and therefore had no obligation to pay Buckeye's outstanding invoices.⁴

Believing that AT&T's "instructions" were illegal, Buckeye continues to transmit originating traffic to AT&T and has presubscribed customers to AT&T at their request. Further, Buckeye is unable to block selectively AT&T terminating traffic which comes through an Ameritech tandem switch. To date, AT&T has made only partial payments on terminating access charges, but continues to market its services to Buckeye customers.

Buckeye has been successful in the market because of its ability to respond to unique

³ A copy of this letter is attached as Attachment A.

⁴ A copy of the May 26, 1998 letter is attached as Attachment B. To date, AT&T has a past due balance of \$117,055 for interstate access. It should be noted that although AT&T believes it can choose to ignore the tariffed charges of a carrier whose service it utilized, it insists that it is legally required to bill the appropriate party for use of its service.

local and special customer communications requirements as well as the provision and maintenance of local service, thereby providing substantial public benefit. In addition to its role as a long distance carrier, AT&T competes with Buckeye for local exchange customers.

B. Sprint Has Refused to Pay Buckeye's Lawfully Tariffed Rates

Sprint submitted Access Service Requests to Buckeye in March 1998, originating and terminating traffic was exchanged, and Buckeye was paid at its tariffed rates until the end of 1999. By letter of December 28, 1999, Sprint advised Buckeye that it believed Buckeye's access rates were unreasonable because they were higher than those of the incumbent, (Ameritech) and that Sprint would thereafter adjust its payments to a level it believed was reasonable.⁵ Buckeye responded to Sprint by denying that its rates were excessive and noting that the rates were close to those of Sprint's local exchange carrier in Ohio. Buckeye's demand for full payment has not been met and Sprint currently has a balance due of \$50,161.

II THE COMMISSION SHOULD PROMPTLY GRANT THE EMERGENCY REQUESTS AND ENSURE THAT AT&T AND SPRINT CEASE THEIR ILLEGAL "SELF-HELP"

Although AT&T initiated a request for a Commission determination that it is free to refuse service to CLEC customers whenever it does not like the access rates charged, it has now

⁵ Sprint justified its refusal to pay more than the ILEC rates by claiming the Commission established such rates as a benchmark in its May 16, 1997 Access Reform Order.

moved to preempt the Commission's resolution of that very question through "self-help."⁶

Buckeye agrees with the Petitioners that AT&T's actions violate Sections 201(a), 201(b), 202(a), 203(c), 214(a) and 251(a) for the reasons stated in the petitions.

Similarly, Sprint has claimed for itself the right to decide which tariffed access rates are not just and reasonable and the right to prescribe the reasonable rate. The Commission has recently rejected Sprint's claim that access rates in excess of those of the incumbent LEC are *per se* unreasonable.⁷

⁶ The Commission has repeatedly warned that the existence of a dispute over the appropriate compensation level does not provide grounds for refusal of service. See, *Elkhart Telephone Company, Inc. v. Southwestern Bell Telephone Company*, 11 FCC Rcd. 1051, 1056 (1995) and cases cited at note 78 thereof. The problem is particularly acute for Buckeye, and probably most CLECs, because it cannot block AT&T's terminating traffic, yet receives no revenue because of AT&T's refusal to pay.

⁷ *Sprint Communications Company, L.P. v. MGC Communications, Inc.*, Memorandum Opinion and Order, FCC 00-206, File No. BE-00-MD-002, released June 9, 2000 at para. 7.



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December 3, 1999

Alfred C. Silvidi
Buckeye Telesystems
5552 Southwyck Boulevard
Toledo, Ohio 43614

Re: Invoices for Switched Access Services

Dear Mr. Silvidi:

AT&T Corp. ("AT&T") is in receipt of invoices from Buckeye Telesystems ("Buckeye"), purportedly for switched access services.

By letter dated May 26, 1998, AT&T advised Buckeye that AT&T would not purchase Buckeye's switched access services. AT&T has not ordered originating or terminating switched access services from Buckeye. Therefore, AT&T is not obligated to pay Buckeye for the access services on the invoices.

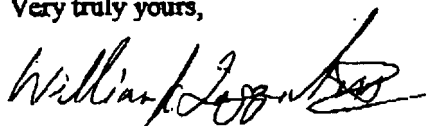
We hereby instruct Buckeye to immediately cease routing all traffic to AT&T's network, including, but not limited to, 0+, 1+, 500+, 700+, 8YY+, 900+ and all AT&T associated 10-10-XXX traffic. In addition, Buckeye should not complete any calls terminating from AT&T's network that are intended for Buckeye's local exchange customers. Moreover, we instruct Buckeye not to presubscribe any of its local exchange customers to AT&T's interexchange services. To the extent that Buckeye has improperly presubscribed its customers to AT&T, please notify all such customers immediately that Buckeye is not authorized to presubscribe customers to AT&T and assist them in selecting another interexchange carrier who has provided Buckeye with the appropriate authorization or another local exchange provider who is authorized to presubscribe its customers to AT&T's interexchange services.

We trust that Buckeye will immediately comply with AT&T's instruction not to presubscribe any of its customers to AT&T's long distance service. In the event that Buckeye does not for any reason comply with this instruction, please be advised that, although AT&T is not obligated to pay for access services it did not order, AT&T is legally obligated to bill the appropriate party for use of AT&T's long distance services. Moreover, AT&T must bill the appropriate party to prevent fraudulent use of its network. In order to do so, AT&T needs customer account records from Buckeye through the CARE or BNA processes for any use of AT&T's long distance services by Buckeye's local exchange customers provided through switched access services not ordered by AT&T. While AT&T has no choice but to accept these CARE records from Buckeye or request BNA information, such action in no way may be construed as the order or purchase of access service from Buckeye.

AT&T will hold Buckeye liable for all losses, damages and costs arising out of Buckeye's improper and unauthorized routing of traffic to AT&T's network.

If Buckeye would like to discuss the possibility of mutually acceptable arrangements between the parties for Buckeye's provision of access services to AT&T, it will be necessary for Buckeye to execute the enclosed Confidentiality and Pre-Negotiation Agreement. AT&T's participation and willingness to engage in discussions with Buckeye are not to be considered an order, acceptance or purchase of originating and/or terminating switched access services from Buckeye by AT&T or a suspension, interruption, termination or revocation of AT&T's instruction to Buckeye to cease routing traffic to AT&T's network, to not complete calls from AT&T's network, and to stop presubscribing Buckeye's local exchange customers to AT&T's interexchange services.

Very truly yours,

A handwritten signature in dark ink, appearing to read "William J. Taggart III", with a stylized flourish at the end.

William J. Taggart III

cc: Geri Sadowski
Brian Moore



Philip I. Miller
Division Manager
Local and Access Business Development

May 26, 1998

Al Silvidi
Manager - Interconnection Regulatory
Buckeye Telesystems
NOC
4818 Angola Road
Toledo, OH 43615

Dear Al,

Your company recently provided AT&T its originating and terminating switched access rate information. Upon review of your tariffs, AT&T has determined that your company's rates are not competitive with the industry. For the present, AT&T has concluded that it will not purchase your switched access service. AT&T will work with Buckeye Telesystems, and intends to provide you with contract outlining terms and conditions that AT&T could find acceptable. We intend to provide you with the contract by mid June, 1998.

My team or I will be available to discuss this with you for early resolution and to avoid any inconvenience to customers. Please contact me on 908-771-3869 or Steve Sisk on 703-691-5955 if you should have any questions or wish to discuss this further.

Sincerely,

Phy well

III CONCLUSION

The combined market power of AT&T and Sprint (for which merger with WorldCom is pending) are such that Buckeye as a competitive carrier cannot reasonably be expected to remain in business if it cannot offer access to the toll services of those IXCs to its local exchange customers. In these circumstances, delay greatly favors AT&T and Sprint, and is as useful to them as a positive decision on the merits. The Commission must act quickly to assure that the issues in this proceeding are not preempted by the unilateral acts of these carriers.

Respectfully submitted




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CERTIFICATE OF SERVICE

I, Shelley Davis, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, do hereby certify that a copy of the foregoing "Comments of Buckeye Telesystem, Inc." was served on this 14th day of June 2000, by first class, U.S. mail, postage prepaid to the following parties:


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